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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Working paper on democracy and the establishment of a democratic society submitted by Mr. Osman El-Hajjé

DEMOCRACY AND THE ESTABLISHMENT OF A DEMOCRATIC SOCIETY

1. All the activities of the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the divers committees set up under the various covenants and conventions concerning human rights have focused on the consolidation, protection, promotion and updating of human rights, as set forth in the Universal Declaration of Human Rights, not only in various civil and political fields, but also in the economic, social and cultural spheres because, in the final analysis, nothing really good or durable can be done or planned without humanity and its cooperation. That is why the human being must once again become central to the process of taking decisions and of supervising and monitoring the legislative, judicial and administrative activities of the authorities. How is this to be achieved?

2. The Universal Declaration of Human Rights has indicated the path to be followed in article 29, paragraph 2, by drawing attention to the close link between the realization of human rights and the existence of a democratic

society. Likewise, the Preamble and Articles 1 and 55 of the Charter of the United Nations highlighted the same link with development. One notion clearly emerges immediately: respect for human rights cannot be dissociated from social progress and democracy. This relationship, or rather this complementarity, is confirmed in the Preamble to the two International Covenants, and the General Assembly has proclaimed the right to development as an inalienable human right in its various resolutions on the subject. 1/ The sole object of prosperity and well-being is the good of humanity. This pronounced complementarity between human rights, democracy and development has led to the conclusion that they are indivisible and interdependent 2/ since, together, they are designed to secure human dignity. This conclusion has been confirmed on several occasions, above all in the Vienna Declaration and Programme of Action adopted on 25 June 1993 by the World Conference on Human Rights.

3. The Manila Declaration of 1988 3/ reaffirmed the indissoluble link between peace, democracy and development, while the Managua Declaration adopted by the Second International Conference of New or Restored Democracies, held at Managua from 4 to 6 July 1994 (A/49/713, annex I) asserted in its first paragraph that "The growing trend towards democracy and political pluralism guarantees the sovereignty of peoples and the existence of the rule of law, as well as the full exercise, respect for and protection of human rights". Paragraphs 6 and 3 then go on to say that "Development, as one of the fundamental rights of all nations [which] promotes the full exercise of democracy" is "the best way to achieve human and social development".

4. The General Assembly of the United Nations recognized the significance of the Managua Declaration in resolution 49/30 of 7 December 1994. In resolution 1995/60 the Commission on Human Rights recommended that our Sub-Commission should discuss "ways and means of overcoming obstacles to the consolidation of democratic societies, taking into account the relation between democracy, development and human rights". The Commission further decided to examine this topic at its fifty-second session under an agenda item entitled "Further promotion and encouragement of human rights and fundamental freedoms [...]" taking into account the outcome of the discussion to be held in the Sub-Commission.

5. UNESCO for its part adopted a World Plan of Action for Human Rights and Democracy at the International Congress held in Montreal from 8 to 11 March 1993, and there is no need to list all the activities which have been carried out by the Council of Europe or are on its programme for 1995. It must be said, however, that the Sub-Commission has acted as a pioneer in this field by broaching this subject at its forty-sixth session and making it agenda item 4 of the current session.

6. But what is the point at issue? Why should this topic be discussed and to what end? Quite simply, the aim is to enable citizens, individually or in freely formed groups, to participate in the management (in the wider sense) of national affairs according to rules which objectively safeguard the interests of each citizen, recognized groups and minorities, without sacrificing the interests of the overall community which makes up the population of a country.

7. At first sight, the proposed action appears simple to carry out and easy to consolidate, but this is reckoning without the obstacles and hurdles erected by habits and customs accumulated in the course of what has sometimes been a very turbulent history, and without the conflicts of interest among individuals, groups and minorities who urge reciprocal exclusion or the placing of the tightest possible restrictions on outward signs of other people's participation, through legislative, administrative or even authoritarian measures without any legal or rational foundation warranted by the circumstances. To this end, it seems to be extremely important that individual obstacles should be identified so that they can be removed, as this is a prerequisite for the establishment of a democratic society guaranteeing the above-mentioned participation. Historians, anthropologists and political scientists have pinpointed some of these hindrances, which include the dominant influence of family and tribal bonds. For example, the relations between the head of a family and a child resemble those between leaders and their subjects or citizens. Similarly, the bonds of tribal, ethnic or religious solidarity have been regarded as obstacles, as they give rise to collective antagonism between nation States and groups. It is up to the Sub-Commission to hold a fruitful exchange of views to identify all impediments, with a view to classifying them according to category and field and suggesting ways of removing them. States may be of great assistance by indicating the stumbling blocks they are encountering on the path to democracy.

8. A definition of democracy does not seem paramount in order to conduct such an exercise successfully and arrive at valid, practical conclusions, because each society can organize citizen participation in the way which best suits it and which is adjusted to its level of economic, social and cultural development, although it cannot abolish the rights which international law secures to individuals, groups and minorities, in accordance with a minimum standard considered essential for the free expression of this participation, it being understood that the concept of democracy evolves and that consequently no definition will long withstand the changes affecting all human societies.

9. Why should there be citizen participation, the most tangible expression of democracy? It is both rational and moral that, in any society, he who supplies, ensures or produces the means, tools and materials needed to carry out an activity, scheme or measure and who, moreover, bears the favourable or unfavourable consequences of its implementation, should be told about it and consulted, so that he can give his informed opinion on the proposal and really so that no start is made on its execution unless a predetermined majority of citizens expresses support for it. This presupposes a wide-ranging, free, unrestricted debate, using the most appropriate means of expression, among those who are for or against, or who can propose alternatives. To this end, citizens holding similar views can form ad hoc groups when a proposal is examined, or may join together permanently in political parties, associations and trade unions, in the effective exercise of the right of freedom of association embodied in the Universal Declaration of Human Rights and other instruments.

10. The objectives are simple: to protect and promote the human rights of the citizen by maintaining a permanent dialogue among the various components of national society on subjects which concern their present, their future and their relations with others, so that compromise solutions respecting the rights of individuals and groups, including minorities, can be worked out and put into effect in the best interests of all. This method of action prevents the imposition of authoritarian and arbitrary solutions by a majority or, sometimes, a minority.

11. This approach makes it possible not only to maintain peace within the country and preserve stable, permanent institutions, but also to retain the requisite capacity to change these institutions if needed. Thus external

peace can be safeguarded and the development process may be launched without institutional obstacles. The absence of one of the foundations of democracy, that is to say (constructive) dialogue, has led to the taking of arbitrary, destructive decisions in several countries. Examples abound, but reference to the Somali tragedy will suffice.

12. The acceptance of such a design certainly presupposes political, economic and social knowledge. The international community has already worked out the methodology and techniques needed to spread know-how. There are plenty of suitable international institutions (UNESCO is one example which has proved its worth). Lack of knowledge cannot therefore be used as a pretext for delaying citizen participation in the management of public affairs still further. Moreover, everyone is aware of the importance of this participation, as is evidenced by the deliberations on the draft declaration on the right and responsibility of individuals and groups, which might be completed in the very near future.

13. Peace, development and the respect of human rights necessitate the establishment of suitable institutions to find solutions to problems which set one citizen against another and citizens against the State and its organs. This task might fall to the courts, which must exercise this function independently. Some countries have, however, appointed ombudsmen responsible for sorting out other problems as well and, consequently, for maintaining a constructive dialogue and peace.

14. The independence of the judicial power from other powers must be guaranteed. Generally the powers mentioned are only the legislature and executive, but other, less clearly specified powers may intervene in the functioning of justice so as to deflect it from its course or even to make it subservient. It is commonplace to refer to the power of money to corrupt, but the media are playing an increasing role either by helping the courts to remain independent, impartial and objective, or by distorting their perception of facts and events and, accordingly, the verdict which may be reached. Democracy presupposes free media and independent courts. Maintaining both in these circumstances means seeking out obstacles in order to remove them.

15. The legislature and the executive must also be independent, because their concentration in the hands of the same individuals would certainly have

adverse repercussions on the functioning of the administrative authorities and would imperil public freedoms, which are essential to the respect of human rights.

16. The effectiveness of all these institutions presupposes a neutral, impartial police force whose sole duty is the maintenance of law and order by deterrence. The military, in whom a civic spirit must be instilled, will be responsible only for the defence of the national territory and the integrity of its borders and for any other useful function in the general interest which does not conflict with the interests of the social groups making up the national community.

17. To this end, it might be useful to ascertain the total strength of the police and armed forces, and what proportion of the total population of the country they represent and to find out how they are recruited, in order to establish an optimum balance which does not hamper the right to development or human rights. Similarly, the percentage of the national budget allocated every year to the upkeep, maintenance, instruction and equipping of the police and army should be determined. Their duties under the Constitution and institutional acts, the nature, quality, content and scope of their training and their place in the social order must also be established. All these factors are indicators of the mass of obstacles and their influence on the functioning of the institutions of a country and other social, economic and political groups.

18. In this catalogue, the per capita distribution of national wealth, the nature of this wealth and the guarantees protecting the right of ownership might reveal certain barriers to the establishment of a democratic society as, in the final analysis, the non-existence or precariousness of private ownership serve to weaken or even suppress any objective individual or group independence, consequently rendering a critical attitude impossible in a society which then loses its soul and its spirit.

19. The achievement of all the aims mentioned (which are really only a sample) might reveal what impediments exist to the maintenance of peace, the attainment of democracy and the initiation or completion of the development process. It goes without saying that other obstacles will emerge with time and as society develops and that an attempt must also be made to identify them, so that they can be removed without affecting the continuity and stability of democratic society.

20. It is this important task which the Commission on Human Rights assigned to the Sub-Commission in resolution 1995/60. Will we be able to rise to the challenge? Throughout its history, the Sub-Commission has proved that it is willing and able to carry out this formidable task successfully in the interests of the whole international community. To do so, we must instruct a special rapporteur of the Sub-Commission to identify the obstacles to democracy, list them, classify them according to category of rights, propose ways and means of removing them and submit a preliminary report on this subject. We could also propose that the Commission on Human Rights should appoint this rapporteur. The work initiated or completed by thematic rapporteurs in various fields constitutes a solid basis and will certainly promote the success of this endeavour.

Notes

1/ Resolution 35/174 of 15 December 1980 and Commission on Human Rights resolution 5 (XXXV) of 2 March 1979.

2/ Cf., in particular, the report of Danilo Türk on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1989/19).

3/ Manila Declaration of 1988, issued on 6 June 1988 at the conclusion of the International Conference of Newly Restored Democracies, held at Manila from 3 to 6 June 1988 (see A/43/538, annex).

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